

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

ERWIN BURLEY,	§	
	§	
Petitioner,	§	
VS.	§	CIVIL ACTION NO. 2:13-CV-215
	§	
WILLIAM STEPHENS,	§	
	§	
Respondent.	§	

MEMORANDUM AND RECOMMENDATION

Petitioner is a state prisoner currently incarcerated at the Allred Unit in Iowa Park, Texas. Proceeding *pro se*, he filed a habeas corpus petition pursuant to 28 U.S.C. § 2254, challenging his conviction. (D.E. 1). Pending is Plaintiff's motion to dismiss his petition. (D.E. 52). The undersigned has considered Plaintiff's Motion and believes it should be **GRANTED**. Therefore, it is respectfully recommended that Plaintiff's petition be **DISMISSED** without prejudice.

A memorandum and recommendation ("M &R") addressing Respondent's Motion to Dismiss was entered on December 12, 2013, recommending this case be dismissed. (D.E. 34). This M & R considered the original petition (D.E. 1) but did not consider Petitioner's amended petition.¹ (D.E. 28). Therefore, the M & R was withdrawn on

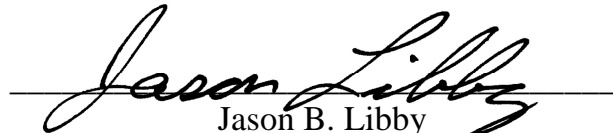
¹ On February 7, 2013, Petitioner filed a prisoner civil rights complaint pursuant to 42 U.S.C § 1983, alleging violations of his constitutional rights which allegedly occurred in connection with his state court investigation, prosecution and felony conviction for which he is currently confined. (Case No. 2:14-cv-00043). An M & R is currently pending in this action, recommending Petitioner's case be dismissed as not cognizable pursuant to *Heck v. Humphrey*, and any excessive force claims as barred by the statute of limitations. 512 U.S. 477, 486-587 (1994); (D.E. 18).

February 12, 2014, ordering Respondent to file a supplemental motion to dismiss addressing Petitioner's additional grounds for relief as set forth in his amended petition no later than April 11, 2014. (D.E. 45). Respondent later requested an extension and was given until May 11, 2014, to file the supplemental motion. (D.E. 51).

On March 3, 2014, Petitioner filed a Motion to Stay these proceedings in order to file a state habeas corpus petition addressing all of the grounds for relief raised in the pending petition. (D.E. 48 and D.E. 50). On April 21, 2014, Petitioner filed the pending Motion to Dismiss, requesting his Motion to Stay be withdrawn and his petition be dismissed to allow him to pursue state court remedies. (D.E. 52).

The undersigned has considered Plaintiff's Motion and believes it should be **GRANTED**. Therefore, it is respectfully recommended that Plaintiff's petition be **DISMISSED** without prejudice.

ORDERED this 29th day of April, 2014.


Jason B. Libby
United States Magistrate Judge

NOTICE TO PARTIES

The Clerk will file this Memorandum and Recommendation and transmit a copy to each party or counsel. Within **FOURTEEN (14) DAYS** after being served with a copy of the Memorandum and Recommendation, a party may file with the Clerk and serve on the United States Magistrate Judge and all parties, written objections, pursuant to 28 U.S.C. § 636(b)(1)(c); Rule 72(b) of the Federal Rules of Civil Procedure; and Article IV, General Order No. 2002-13, United States District Court for the Southern District of Texas.

A party's failure to file written objections to the proposed findings, conclusions, and recommendations in a Magistrate Judge's report and recommendation within **FOURTEEN (14) DAYS** after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the District Court. *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415 (5th Cir. 1996)(en banc).